

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

SCOTT AND RHONDA BURNETT, RYAN)
HENDRICKSON, JEROD BREIT, SCOTT)
TRUPIANO and JEREMY KEEL, on)
behalf of themselves and all)
others similarly situated,)

Plaintiffs,)

vs.)

No. 4:19-cv-00332-SRB

THE NATIONAL ASSOCIATION OF)
REALTORS, REALOGY HOLDINGS,)
CORP., HOMESERVICES OF AMERICA,)
INC., BHH AFFILIATES, LLC, HSF)
AFFILIATES, LLC, RE/MAX, LLC and)
KELLER WILLIAMS REALTY, INC.,)

Defendants.)

Videotaped 30(b)(6) deposition of BHH
AFFILIATES, LLC and HSF AFFILIATES, LLC by and through
their representative ROSALIE A. WARNER, taken before
NADINE J. WATTS, CSR, RPR, and Notary Public, pursuant
to the Federal Rules of Civil Procedure for the United
States District Courts pertaining to the taking of
depositions, at 321 North Clark Street, Suite 3000, in
the City of Chicago, Cook County, Illinois, commencing
at 10:32 a.m. on the 19th day of October, A.D., 2022.

1 There were present at the taking of this
2 deposition the following counsel:

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12 ALSO PRESENT:

13 Mr. David Beard, Berkshire Hathaway
14 HomeServices

15 Ms. Myriam Pierre Warren, Berkshire
16 Hathaway HomeServices (via Zoom)
17 Mr. Rick Deasley, videographer
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1 Kansas and Missouri. Do you see that?

2 A Yes.

3 Q And when you go back and look at 2054, this
4 company-owned Berkshire Hathaway HomeServices Alliance
5 that we're talking about in St. Louis, do you recall
6 that earlier?

7 A Yes.

8 Q And when we look at that, at who the leadership
9 is of this company-owned Berkshire Hathaway Alliance in
10 St. Louis, it states in here, under the president of
11 this Alliance, that we are large enough to be a leader
12 in St. Louis and Kansas City metropolitan real estate
13 markets. Do you see that?

14 A I do.

15 Q And when it talks about who the chief executive
16 officer is of this Berkshire Hathaway Alliance that we
17 have this document for, it lists the CEO as a Mike
18 Frazier, and it gives his e-mail address there of
19 ReeceNichols. Do you see that?

20 A I do.

21 Q Are you aware that Mr. Frazier is also the chief
22 executive officer of ReeceNichols?

23 A Yes, I am.

24 Q So he's both the chief executive officer of

1 ReeceNichols and the chief executive officer of
2 Berkshire Hathaway HomeServices Alliance, right?

3 A Yes.

4 Q And Berkshire Hathaway HomeServices Alliance
5 actually is a competitor of ReeceNichols in various real
6 estate markets, correct?

7 MR. VARON: Object to the form, foundation, among
8 other things.

9 THE WITNESS: Yes, it may be.

10 MR. KETCHMARK: Q Well, isn't it weird? How can
11 you be a CEO of two companies that compete with each
12 other?

13 MR. VARON: Object to the form.

14 THE WITNESS: I believe that the Berkshire Hathaway
15 HomeServices operation is ran very independently from
16 the ReeceNichols operation.

17 MR. KETCHMARK: Q So the CEO of ReeceNichols is
18 competing with Berkshire Hathaway Alliance, which he's
19 also the CEO of?

20 MR. VARON: Object to the form.

21 THE WITNESS: Yes.

22 MR. KETCHMARK: Q So one day does he wake up and
23 put on his ReeceNichols hat and then he goes home and he
24 puts that hat off and the next day he puts on his

1 Berkshire Hathaway; is that how it works?

2 MR. VARON: Object to the form.

3 THE WITNESS: I'm not there when he gets dressed.

4 MR. KETCHMARK: Q That was a -- it's what's called
5 a metaphor. You know what a metaphor is, do you not,
6 ma'am?

7 A Yes, I do.

8 Q Yes, I wasn't asking that --

9 A I don't know --

10 Q Just a second. Obviously you're not there when
11 he gets dressed. And this is a very serious litigation.
12 It's a very serious --

13 A It is.

14 Q -- question.

15 My question to you is, how is it fair to have
16 a man who's the CEO of one company, ReeceNichols in
17 Kansas City, also be the CEO of an owned company of
18 Berkshire Hathaway that competes with ReeceNichols in
19 Kansas City?

20 MR. VARON: Object to the form.

21 MR. KETCHMARK: Q I'm going to ask the question
22 again. How is it fair to have a man who is the CEO of
23 ReeceNichols that competes in Kansas City with Berkshire
24 Hathaway Alliance also be the CEO of Berkshire Hathaway

1 Alliance? How is that fair?

2 MR. VARON: Object to the form.

3 THE WITNESS: Evidently he manages to do it. I
4 don't know how he manages, but he does, and the model
5 must work for them.

6 MR. KETCHMARK: Q Well, have you done anything on
7 behalf of the two corporations that you're here
8 testifying on behalf of to make sure that he's complying
9 with Missouri law when he manages these two competitors?

10 MR. VARON: All right. Object to the form. She's
11 not here to testify about what ReeceNichols does.

12 MR. KETCHMARK: Q I asked you, ma'am, if you have
13 done anything on behalf of your employers, who you're
14 here testifying on behalf of, to ensure that this
15 company-owned Berkshire Hathaway HomeServices Alliance
16 complies with Missouri law?

17 MR. VARON: Object to the form.

18 MR. KETCHMARK: Q Go ahead.

19 MR. VARON: Now go ahead.

20 MR. KETCHMARK: Q Go ahead.

21 A I would say yes, you know.

22 Q Okay. What have you done to make sure he's
23 complied with Missouri law?

24 A Well, as far as the Missouri law that I am aware

1 of -- You know, we have a Berkshire Hathaway Energy
2 conduct of ethics and practices that all of our
3 employees, whether they're on the HomeServices teams or
4 on the Berkshire Hathaway HSF teams, that apply by --
5 apply and live by the Berkshire Hathaway Energy Code of
6 Ethics. We also have a Code of Ethics within HSF that
7 our employees abide by.

8 So I would say from that standpoint we have
9 made sure that they have applied by the ethical laws of
10 Missouri. And that's the extent I can go to.

11 Q And one of those would be Exhibit No. 748, the
12 Operations Manual for Berkshire Hathaway. Do you see
13 that?

14 A Yes.

15 Q And under Commissions, one of them would be that
16 you should not participate in discussions -- the CEO of
17 Berkshire Hathaway Alliance, should not participate in
18 discussions with competitors about commissions, right?

19 MR. VARON: Object to the form. It doesn't say
20 that.

21 MR. KETCHMARK: Q That's what it says, right?

22 A To avoid antitrust implications, franchisees
23 should not participate in discussions with other real
24 estate brokers or BHHS franchisees regarding commission

1 fees or commission splits.

2 Q And that same policy would apply to
3 company-owned stores, like the BHH Alliance, that
4 they're not to participate in discussions with
5 competitors about commissions or commission splits,
6 right?

7 A Yes.

8 Q Yet he's not only participating in the
9 discussions with the competitor, he's the CEO of the
10 competitor, isn't he?

11 MR. VARON: Object to the form.

12 THE WITNESS: He is the CEO, but I will tell you
13 that what I know and how Alliance is run is that they
14 run it very autonomously from any other operation. So
15 they are in control of what they do with their business.

16 MR. KETCHMARK: Q But you have never one time had
17 a single conversation with the CEO of the Berkshire
18 Hathaway owned Alliance, and who is also the CEO of
19 ReeceNichols, you never one time had a conversation with
20 this man, Mr. Frazier, to ask him how he juggles those
21 two competing hats, have you?

22 MR. VARON: Object to the form.

23 THE WITNESS: I have not had that conversation.

24 MR. KETCHMARK: Q I want to shift gears now and